PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re application of	Docket No: Q62674
Keiichi HAYASHI	
Appln. No.: 09/759,220	Group Art Unit: 2617
Confirmation No.: 9946	Examiner: Julio R. Perez
Filed: January 16, 2001	

For: MOBILE COMMUNICATION TERMINAL AND RINGING METHOD THEREOF

APPEAL BRIEF UNDER 37 C.F.R. § 41.37

MAIL STOP APPEAL BRIEF - PATENTS
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In accordance with the provisions of 37 C.F.R. § 41.37, Appellant submits the following:

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I. REAL PARTY IN INTEREST

The real party in interest in this appeal is NEC CORPORATION. Assignment of the application was submitted to the U.S. Patent and Trademark Office on January 16, 2001, and recorded on the same date at Reel 011453, Frame 0358.

II. RELATED APPEALS AND INTERFERENCES

There are no known appeals or interferences that will affect, be directly affected by, or have a bearing on the Board's decision in the pending appeal.

III. STATUS OF CLAIMS

Claims 1-3 and 8-10 stand finally rejected under 35 U.S.C. § 102(b) as being anticipated by Lin et al. (U.S. Patent No. 6,366,791).

Claims 4-7 and 11-14 stand finally rejected under 35 U.S.C. § 103(a) as being unpatentable over Lin et al. in view of Yoshino et al. (U.S. Patent No. 6,308,086).

The rejections of claims 1-14 are being appeal.

IV. STATUS OF AMENDMENTS

No amendments have been filed after the Final Office Action.

V. SUMMARY OF THE CLAIMED SUBJECT MATTER

The claimed invention relates to a mobile communication terminal and its ringing method that is capable of using downloaded tone information as a incoming ringing tone and a tone for e-mails. Specification, page 2, lines 2-5.

Fig. 1 is a conceptual diagram showing a melody-data (ringing tone patterns) delivery system for the mobile communication terminal according to an embodiment of the claimed invention. As shown in Fig. 1, the melody-data delivery system forms a network 7 comprising a portable telephone 1 owned by a user, which serves as a mobile communication terminal, a Web-site server 2 for managing the melody data to be delivered, a gateway 3, a switch 4, wireless base stations 15 5A to 5C and a mail server 6. Page 5, lines 8-15.

In the system, when the user initially starts communications with the wireless base station 5B to obtain melody data, by using a browser function equipped in his/her portable telephone 1, the base station 5B completes access to the Web site server 2. The Web site server 2 then delivers the melody data requested by the user to the portable telephone 1. Page 5, lines 16-22.

The melody data (incoming ring tone patterns) is stored in a memory 13. Page 5, lines 27-30. With a help of the controller 19, the tone generator 17 fetches tone data (tone information) specified in the melody data, that is, incoming ring tone patterns, which has been delivered from the Web server 2 and stored in the memory 13. The tone generator 17 then sets the actual playing speed (tempo) of a melody or tune to be played through the speaker 18 conforming to the melody data, which indicates the setting of a tone associated with the melody data. Page 7, lines 9-15.

The tone generator 17 produces various tones such as tones of various musical instruments by performing a modulation processing based on tone parameters in the melody data stored in the memory 13. Page 7, lines 16-18.

Fig. 3 is a flowchart showing an example of operations such as a tone setting and a ringing operation on the mobile communication terminal according to an embodiment of the claimed invention. In step S1, when the mobile communication terminal receives a call or e-mail, the controller 19 of the terminal checks as to whether melody data stored in the memory has tone specifications (tone parameters). If the melody data has the tone specification (YES in Step S1), it is checked in step S2 whether the specified tone is a fixed tone. If YES is rendered in step S2, that is, in a case where the specified tone is a fixed tone, information or data corresponding to the fixed tone is fetched from the memory (Step S3), then the processing goes to Step S7. Page 7, line 23 to page 8, line 3.

If it is determined in step S1 that the melody data has no tone specifications, the controller 19 fetches from the memory information or data corresponding to a tone which will be sounded when there is no tone specification (step S4). The controller 19 then advances processing to step S7. If it is determined in step S2 that the specified tone is not a fixed tone, a check is made in step S5 as to whether the tone information contained in the melody data is correct. If it is correct (YES in step S5), the controller 19 fetches the tone information in the melody data (step S6). The processing then goes to step S7. Page 8, lines 4-13.

Alternatively, if a determination is made in step S5 that the tone information in the melody data is not correct, the processing goes to step S4 where the controller 19 fetches from

the memory information or data corresponding to a tone to be sounded when there is no tone specification. The processing then goes to step S7. In step S7, the tone information which has been fetched in step S3, S4 or S6 is set to the tone generator 17. Tempo (a playing speed in other words) of a melody to be played in association with the melody data is also set in step S8. After these settings, the melody is played in step S9. Page 8, lines 14-22.

The subject matter of each of the independent claims, with reference to the specification, is identified below.

1. A mobile communication terminal equipped with an Internet browser function (item 1, figures 1, 2; page 5, lines 16-20), comprising:

means for fetching melody data from a web-based server apparatus by using said browser function (item 1, figures 1 and 2; page 5, lines 16-20); and

tone setting means (item 17, figure 2; page 7, lines 12-18) that generates ringing tones by using tone information contained in said melody data.

The structure of the means for fetching melody data includes the portable telephone 1 with a browser function. Page 5, lines 16-20.

The structure of the tone setting means includes the tone generator 17. Page 7, lines 12-18.

8. A ringing method for a mobile communication terminal equipped with an Internet browser function (figure 3; page 5, lines 16-23), comprising:

having access to a web-based server equipment by means of said browser function (page 5, lines 8-20);

notifying said server equipment of desired melody data in conformity with said access (page 5, lines 16-20);

receiving said desired melody data from said server equipment (page 5, lines 21-23);

storing said received desired melody data (page 5, lines 27-30);

judging whether said stored melody data contains tone information (S1, figure 3; page 7, lines 23-28);

fetching said tone information if it is judged that said melody data contains the tone information (S6, figure 3; page 8, lines 9-13);

generating a tone for playing a melody in accordance with said melody data, by using said fetched tone information (S7, figure 3; page 8, lines 19-22); and

playing said melody in said set tone (S9, figure 3; page 8, lines 19-22).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Appellant requests that the following rejections be reviewed:

1. The rejection of claims 1-3 and 8-10 under 35 U.S.C. § 102(b) as being anticipated by Lin et al. (U.S. Patent No. 6,366,791);

2. The rejection of claims 4-7 and 11-14 under 35 U.S.C. § 103(a) as being unpatentable over Lin et al. in view of Yoshino et al. (U.S. Patent No. 6,308,086).

No other grounds of rejection or objection currently are pending.

This appeal is directed to claims 1-14.

VII. ARGUMENT

1. The Rejection of claims 1-3 and 8-10 under 35 U.S.C. § 102(b) as allegedly being anticipated by Lin et al.

Appellant respectfully requests the members of the Board to reverse the aforementioned rejection of claims 1-3 and 8-10 under 35 U.S.C. §102(b) as allegedly being anticipated by Lin et al. Appellant disagrees with the Examiner's rejections because Lin et al. fails to disclose or suggest all of the claim limitations. Specifically, Lin et al. fails to disclose or suggest at least the following:

Claim 1:

> tone setting means that generates ringing tones by using tone information contained in said melody data.

Claim 8:

> generating a tone for playing a melody in accordance with said melody data, by using said fetched tone information;

Regarding claims 1 and 8, one feature of Appellant's claimed invention is that the melody data contains actual tone information/data and that information/data is used by the tone setting means to generate the tones. On the other hand, the prior art downloads tone patterns, as opposed to the actual tone data that is used to generate tones. For example, Lin et al. discloses downloading tone patterns (item 65 in figure 4). In Lin et al., the tone information/data used to generate the tones is contained in the mobile station 20 and is not fetched from the server. For example, Lin et al. may download a pattern tones that should be used (tone X, then tone A, then tone B, etc.). The mobile station then generates tones X, A, B, etc. by using information about

those tones that are already in the mobile station. This is clearly different than the claims. In the claimed invention, the tone setting means generates tones by using tone information that has been fetched from the server.

Regarding claims 2, 3, 9 and 10, they should be allowable at least based on their dependence from claims 1 or 8.

2. The Rejection of claims 4-7 and 11-14 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Lin et al. in view of Yoshino et al.

Appellant respectfully requests the members of the Board to reverse the aforementioned rejection of claims 4-7 and 11-14 under 35 U.S.C. §103(a) as allegedly being unpatentable over Lin et al. in view of Yoshino et al. Appellant disagrees with the Examiner rejections because Lin et al. fails to disclose or suggest all of the claim limitations and there is not suggestion or motivation in the prior art that would have led one skilled in the art to modify Lin et al. system to arrive at the claimed invention.

First, claims 4-7 and 11-14 should be allowable at least based on their dependence from claims 1 and 8 for the same reasons described above, because Yoshino et al. fails to make up for the deficiencies of Lin et al.

Next, the Examiner concedes that Lin et al. fails to disclose or suggest a tone setting means that generates ring tones by performing a modulation processing by using tone information contained in the melody data. In order to make up for this deficiency, the Examiner cites to Yoshino et al. and asserts that one of skill in the art would have combined the Yoshino teaching of modulation processing with the Lin et al. mobile station so that the set ringing tones in the musical scores could be executed as ringing tone patterns on the mobile station. Appellant

respectfully disagrees. Because the tone information is already contained in the Lin et al. mobile station and is not fetched from a server, there would be no need to extract audio information from the fetched data and then perform modulation processing.

In addition, Yoshino may generate scales (a series of musical notes), but does not modulate tones. For example, claim 1 of Yoshino states, "generating and outputting a musical scale signal from the musical scale information." If tones are determined based on scales, each having different tones, they would not compose a natural melody. Therefore, the Yoshino requires that a musical scale signal be generated from musical scale information. Even if the Yoshino uses the word "tone," that "tone" is not equivalent to the claimed tone.

Further, in Yoshino, since setting of tones is equal to setting of a scale, melody data need not contain information on setting of tones. The claimed invention includes not only melody data (scales) but also tones. Therefore, Yoshino does not make up for the deficiencies of Lin.

Unless a check is submitted herewith for the fee required under 37 C.F.R. §41.37(a) and 1.17(c), please charge said fee to Deposit Account No. 19-4880.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

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December 26, 2006

CLAIMS APPENDIX

CLAIMS 1-14 ON APPEAL:

1. A mobile communication terminal equipped with an Internet browser function, comprising:

means for fetching melody data from a web-based server apparatus by using said browser function; and

tone setting means that generates ringing tones by using tone information contained in said melody data.

2. The mobile communication terminal according to claim 1, wherein if said melody data contains no tone information, said tone setting means generates a ringing tone based on preset tone information.

3. The mobile communication terminal according to claim 1, wherein if said melody data contains tone information, said tone setting means judges the validity of said tone information.

4. The mobile communication terminal according to claim 3, wherein said tone setting means generates ringing tones by performing a modulation processing based on said tone information contained in said melody data.

5. The mobile communication terminal according to claim 4, wherein said tone information contained in said melody data constitutes tone parameters used for said modulation processing.

6. The mobile communication terminal according to claim 2, further comprising:

ringing-speed setting means for setting a tempo at which a melody is played in accordance with said melody data.

7. The mobile communication terminal according to claim 5, further comprising:

ringing-speed setting means for setting a tempo at which a melody is played in accordance with said melody data.

8. A ringing method for a mobile communication terminal equipped with an Internet browser function, comprising:

having access to a web-based server equipment by means of said browser function;

notifying said server equipment of desired melody data in conformity with said access;

receiving said desired melody data from said server equipment;

storing said received desired melody data;

judging whether said stored melody data contains tone information;

fetching said tone information if it is judged that said melody data contains the tone information;

generating a tone for playing a melody in accordance with said melody data, by using said fetched tone information; and

playing said melody in said set tone.

9. The ringing method for a mobile communication terminal according to claim 8, wherein if said melody data contains no tone information, a ringing tone is generated based on preset tone information.

10. The ringing method for a mobile communication terminal according to claim 8, wherein if said melody data contains tone information, the validity of said tone information is judged.

11. The ringing method for a mobile communication terminal according to claim 10, wherein said ringing tones are generated by performing a modulation processing based on said tone information contained in said melody data.

12. The ringing method for a mobile communication terminal according to claim 11, wherein said tone information contained in said melody data constitutes tone parameters used for said modulation processing.

13. The ringing method for a mobile communication terminal according to claim 9, further comprising setting a tempo at which a melody is played in accordance with said melody data.

14. The ringing method for a mobile communication terminal according to claim 12, further comprising setting a tempo at which a melody is played in accordance with said melody data.

EVIDENCE APPENDIX:

This Section Is Not Applicable To The Instant Appeal.

RELATED PROCEEDINGS APPENDIX

This Section Is Not Applicable To The Instant Appeal.

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SUBMISSION OF APPEAL BRIEF

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Sir:

Submitted herewith please find an Appeal Brief. The statutory fee of $500.00 is being charged to Deposit Account No. 19-4880 via EFS Payment Screen. The USPTO is also directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

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